

D/F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DARRYL MITCHELL and DENISE MITCHELL,

Plaintiffs,

-against-

SUFFOLK COUNTY and NASSAU COUNTY,

Defendants.
-----X

ORDER

13-CV-4636 (SJF)

FILED

IN CLERK'S OFFICE
U S DISTRICT COURT E D N Y

★ MAY 30 2014 ★

FEUERSTEIN, District Judge:

LONG ISLAND CITY, NY

On August 16, 2013, plaintiffs Darryl Mitchell and Denise Mitchell filed a document entitled "Petition for a Writ of Habeas Corpus" brought "pursuant to the provisions of 28 U.S.C. § 2241-2255" (the "petition"). [Docket Entry No. 1]. On September 23, 2013, this Court ordered that plaintiffs show cause why the petition should not be construed as a civil complaint brought pursuant to 42 U.S.C. § 1983 ("Section 1983"), and advised plaintiffs to withdraw the petition or consent to have the submission construed as a Section 1983 complaint. [Docket Entry No. 3]. On October 21, 2013, plaintiffs submitted an "Affidavit of Fact in Response to the Order to Show Cause" (the "October 21, 2013 Submission") [Docket Entry No. 5]. Accordingly, by Order dated April 9, 2014, the Court construed the petition and the October 21, 2013 Submission as a civil complaint which purports to allege a civil rights claim pursuant to Section 1983, and ordered plaintiffs to pay the \$400 filing fee or submit an application to proceed *in forma pauperis* in order for their case to proceed. [Docket Entry No. 6]. On May 9, 2014, plaintiffs paid the \$400 filing fee [Docket Entry No. 9], and, on May 12, 2014, they filed an amended complaint [Docket Entry No. 10].

Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Given the foregoing procedural history, the Court orders that the 120 day period shall run from the date that plaintiffs filed the amended complaint, May 12, 2014. Accordingly, if service is not made upon defendants by **September 11, 2014**, or plaintiffs fail to show good cause why such service has not been effected, this action will be dismissed without prejudice. **Plaintiffs are to provide a copy of this Order, and the Notice of Hearing dated May 30, 2014, to the defendants along with the summonses and the amended complaint.**

Plaintiffs are required to advise the Clerk of Court of any change of address. Failure to keep the Court informed of plaintiffs' current address means the Court will not know where to contact plaintiffs and may result in dismissal of the case.

SO ORDERED.

s/ Sandra J. Feuerstein

Sandra J. Feuerstein
United States District Judge

Dated: May 30, 2014
Central Islip, New York